

ASSEMBLY BILL

No. 1117

Introduced by Assembly Member Smyth

February 18, 2011

An act to amend Section 597.1 of, and to add Section 597.9 to, the Penal Code, relating to animal abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 1117, as introduced, Smyth. Animal abuse: penalties.

Existing law provides that upon the conviction of a person for a violation of a specified law regarding the failure to care for animals, the court is authorized to make an order prohibiting the defendant, as a condition of probation, from owning, possessing, caring for, or having any contact with animals of any kind and to order the convicted person to immediately deliver all animals in his or her possession to a designated public entity, as specified. Existing law requires the court, in the event of acquittal or final discharge of a person arrested pursuant to these provisions, to direct the release of the seized or impounded animals, on demand, upon a showing of proof of ownership.

This bill would instead require the court to make the orders above regarding ownership and forfeiture, as specified. The bill would require the owner to make additional showings in order for the court to direct the release of seized or impounded animals.

Existing law provides that the cost of seizing, caring for, and treating any animal seized pursuant to specified provisions regarding the failure to care for animals shall constitute a lien on the animal and that the animal shall not be returned to its owner until the charges are paid. Existing law provides that no animal properly seized pursuant to these provisions shall be returned to its owner until, in the determination of

the seizing agency or hearing officer, the animal is physically fit, or the owner can demonstrate that the owner can and will provide the necessary care.

This bill would additionally apply these provisions to animals seized pursuant to a search warrant. The bill would, in the event that the owner has satisfied the lien, provide a process for the seizing agency or prosecuting attorney to file a petition seeking forfeiture of any animal, as specified.

Existing law establishes various other crimes regarding cruelty to animals and the failure to care for animals.

This bill would require the court, upon conviction of a person for certain of these crimes, in addition to any other sentence or penalty, to enter an order enjoining the person from owning, possessing, maintaining, having custody of, residing with, or caring for any animal within a specified period after conviction, and would make related changes. The bill would make a violation of this order a misdemeanor, as specified. The bill would provide that the court may, in the interest of justice, reduce the duration of, or, in the case of livestock owners, exempt a defendant from, these restrictions under specified circumstances. By creating a new crime and by increasing the duties of local humane officers, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 597.1 of the Penal Code is amended to
- 2 read:
- 3 597.1. (a) Every owner, driver, or keeper of any animal who
- 4 permits the animal to be in any building, enclosure, lane, street,

1 square, or lot of any city, county, city and county, or judicial district
2 without proper care and attention is guilty of a misdemeanor. Any
3 peace officer, humane society officer, or animal control officer
4 shall take possession of the stray or abandoned animal and shall
5 provide care and treatment for the animal until the animal is
6 deemed to be in suitable condition to be returned to the owner.
7 When the officer has reasonable grounds to believe that very
8 prompt action is required to protect the health or safety of the
9 animal or the health or safety of others, the officer shall
10 immediately seize the animal and comply with subdivision (f). In
11 all other cases, the officer shall comply with the provisions of
12 subdivision (g). The cost of caring for and treating any animal
13 properly seized under this subdivision *or pursuant to a search*
14 *warrant* shall constitute a lien on the animal and the animal shall
15 not be returned to its owner until the charges are paid, if the seizure
16 is upheld pursuant to this section.

17 (b) Every sick, disabled, infirm, or crippled animal, except a
18 dog or cat, that is abandoned in any city, county, city and county,
19 or judicial district may be killed by the officer if, after a reasonable
20 search, no owner of the animal can be found. It shall be the duty
21 of all peace officers, humane society officers, and animal control
22 officers to cause the animal to be killed or rehabilitated and placed
23 in a suitable home on information that the animal is stray or
24 abandoned. The officer may likewise take charge of any animal,
25 including a dog or cat, that by reason of lameness, sickness,
26 feebleness, or neglect, is unfit for the labor it is performing, or that
27 in any other manner is being cruelly treated, and provide care and
28 treatment for the animal until it is deemed to be in a suitable
29 condition to be returned to the owner. When the officer has
30 reasonable grounds to believe that very prompt action is required
31 to protect the health or safety of an animal or the health or safety
32 of others, the officer shall immediately seize the animal and comply
33 with subdivision (f). In all other cases, the officer shall comply
34 with subdivision (g). The cost of caring for and treating any animal
35 properly seized under this subdivision *or pursuant to a search*
36 *warrant* shall constitute a lien on the animal and the animal shall
37 not be returned to its owner until the charges are paid.

38 (c) Any peace officer, humane society officer, or animal control
39 officer shall convey all injured cats and dogs found without their
40 owners in a public place directly to a veterinarian known by the

1 officer to be a veterinarian who ordinarily treats dogs and cats for
2 a determination of whether the animal shall be immediately and
3 humanely destroyed or shall be hospitalized under proper care and
4 given emergency treatment.

5 If the owner does not redeem the animal within the locally
6 prescribed waiting period, the veterinarian may personally perform
7 euthanasia on the animal. If the animal is treated and recovers from
8 its injuries, the veterinarian may keep the animal for purposes of
9 adoption, provided the responsible animal control agency has first
10 been contacted and has refused to take possession of the animal.

11 Whenever any animal is transferred to a veterinarian in a clinic,
12 such as an emergency clinic that is not in continuous operation,
13 the veterinarian may, in turn, transfer the animal to an appropriate
14 facility.

15 If the veterinarian determines that the animal shall be hospitalized
16 under proper care and given emergency treatment, the costs of any
17 services that are provided pending the owner's inquiry to the
18 responsible agency, department, or society shall be paid from the
19 dog license fees, fines, and fees for impounding dogs in the city,
20 county, or city and county in which the animal was licensed or, if
21 the animal is unlicensed, shall be paid by the jurisdiction in which
22 the animal was found, subject to the provision that this cost be
23 repaid by the animal's owner. The cost of caring for and treating
24 any animal seized under this subdivision shall constitute a lien on
25 the animal and the animal shall not be returned to the owner until
26 the charges are paid. No veterinarian shall be criminally or civilly
27 liable for any decision that he or she makes or for services that he
28 or she provides pursuant to this subdivision.

29 (d) An animal control agency that takes possession of an animal
30 pursuant to subdivision (c) shall keep records of the whereabouts
31 of the animal from the time of possession to the end of the animal's
32 impoundment, and those records shall be available for inspection
33 by the public upon request for three years after the date the animal's
34 impoundment ended.

35 (e) Notwithstanding any other provision of this section, any
36 peace officer, humane society officer, or any animal control officer
37 may, with the approval of his or her immediate superior, humanely
38 destroy any stray or abandoned animal in the field in any case
39 where the animal is too severely injured to move or where a

1 veterinarian is not available and it would be more humane to
2 dispose of the animal.

3 (f) Whenever an officer authorized under this section seizes or
4 impounds an animal based on a reasonable belief that prompt action
5 is required to protect the health or safety of the animal or the health
6 or safety of others, the officer shall, prior to the commencement
7 of any criminal proceedings authorized by this section, provide
8 the owner or keeper of the animal, if known or ascertainable after
9 reasonable investigation, with the opportunity for a postseizure
10 hearing to determine the validity of the seizure or impoundment,
11 or both.

12 (1) The agency shall cause a notice to be affixed to a
13 conspicuous place where the animal was situated or personally
14 deliver a notice of the seizure or impoundment, or both, to the
15 owner or keeper within 48 hours, excluding weekends and holidays.
16 The notice shall include all of the following:

17 (A) The name, business address, and telephone number of the
18 officer providing the notice.

19 (B) A description of the animal seized, including any
20 identification upon the animal.

21 (C) The authority and purpose for the seizure, or impoundment,
22 including the time, place, and circumstances under which the
23 animal was seized.

24 (D) A statement that, in order to receive a postseizure hearing,
25 the owner or person authorized to keep the animal, or his or her
26 agent, shall request the hearing by signing and returning an
27 enclosed declaration of ownership or right to keep the animal to
28 the agency providing the notice within 10 days, including weekends
29 and holidays, of the date of the notice. The declaration may be
30 returned by personal delivery or mail.

31 (E) A statement that the cost of caring for and treating any
32 animal properly seized under this section is a lien on the animal
33 and that the animal shall not be returned to the owner until the
34 charges are paid, and that failure to request or to attend a scheduled
35 hearing shall result in liability for this cost.

36 (2) The postseizure hearing shall be conducted within 48 hours
37 of the request, excluding weekends and holidays. The seizing
38 agency may authorize its own officer or employee to conduct the
39 hearing if the hearing officer is not the same person who directed
40 the seizure or impoundment of the animal and is not junior in rank

1 to that person. The agency may utilize the services of a hearing
2 officer from outside the agency for the purposes of complying with
3 this section.

4 (3) Failure of the owner or keeper, or of his or her agent, to
5 request or to attend a scheduled hearing shall result in a forfeiture
6 of any right to a postseizure hearing or right to challenge his or
7 her liability for costs incurred.

8 (4) The agency, department, or society employing the person
9 who directed the seizure shall be responsible for the costs incurred
10 for caring and treating the animal, if it is determined in the
11 postseizure hearing that the seizing officer did not have reasonable
12 grounds to believe very prompt action, including seizure of the
13 animal, was required to protect the health or safety of the animal
14 or the health or safety of others. If it is determined the seizure was
15 justified, the owner or keeper shall be personally liable to the
16 seizing agency for the cost of the seizure and care of the animal,
17 the charges for the seizure and care of the animal shall be a lien
18 on the animal, and the animal shall not be returned to its owner
19 until the charges are paid and the seizing agency or hearing officer
20 has determined that the animal is physically fit or the owner
21 demonstrates to the seizing agency's or the hearing officer's
22 satisfaction that the owner can and will provide the necessary care.

23 (g) Where the need for immediate seizure is not present and
24 prior to the commencement of any criminal proceedings authorized
25 by this section, the agency shall provide the owner or keeper of
26 the animal, if known or ascertainable after reasonable investigation,
27 with the opportunity for a hearing prior to any seizure or
28 impoundment of the animal. The owner shall produce the animal
29 at the time of the hearing unless, prior to the hearing, the owner
30 has made arrangements with the agency to view the animal upon
31 request of the agency, or unless the owner can provide verification
32 that the animal was humanely destroyed. Any person who willfully
33 fails to produce the animal or provide the verification is guilty of
34 an infraction, punishable by a fine of not less than two hundred
35 fifty dollars (\$250) nor more than one thousand dollars (\$1,000).

36 (1) The agency shall cause a notice to be affixed to a
37 conspicuous place where the animal was situated or personally
38 deliver a notice stating the grounds for believing the animal should
39 be seized under subdivision (a) or (b). The notice shall include all
40 of the following:

1 (A) The name, business address, and telephone number of the
2 officer providing the notice.

3 (B) A description of the animal to be seized, including any
4 identification upon the animal.

5 (C) The authority and purpose for the possible seizure or
6 impoundment.

7 (D) A statement that, in order to receive a hearing prior to any
8 seizure, the owner or person authorized to keep the animal, or his
9 or her agent, shall request the hearing by signing and returning the
10 enclosed declaration of ownership or right to keep the animal to
11 the officer providing the notice within two days, excluding
12 weekends and holidays, of the date of the notice.

13 (E) A statement that the cost of caring for and treating any
14 animal properly seized under this section is a lien on the animal,
15 that any animal seized shall not be returned to the owner until the
16 charges are paid, and that failure to request or to attend a scheduled
17 hearing shall result in a conclusive determination that the animal
18 may properly be seized and that the owner shall be liable for the
19 charges.

20 (2) The preseizure hearing shall be conducted within 48 hours,
21 excluding weekends and holidays, after receipt of the request. The
22 seizing agency may authorize its own officer or employee to
23 conduct the hearing if the hearing officer is not the same person
24 who requests the seizure or impoundment of the animal and is not
25 junior in rank to that person. The agency may utilize the services
26 of a hearing officer from outside the agency for the purposes of
27 complying with this section.

28 (3) Failure of the owner or keeper, or his or her agent, to request
29 or to attend a scheduled hearing shall result in a forfeiture of any
30 right to a preseizure hearing or right to challenge his or her liability
31 for costs incurred pursuant to this section.

32 (4) The hearing officer, after the hearing, may affirm or deny
33 the owner's or keeper's right to custody of the animal and, if
34 reasonable grounds are established, may order the seizure or
35 impoundment of the animal for care and treatment.

36 (h) If any animal is properly seized under this ~~section~~, *section*
37 *or pursuant to a search warrant*, the owner or keeper shall be
38 personally liable to the seizing agency for the cost of the seizure
39 and care of the animal. Furthermore, if the charges for the seizure
40 or impoundment and any other charges permitted under this section

1 are not paid within 14 days of the seizure, or, if the owner, within
2 14 days of notice of availability of the animal to be returned, fails
3 to pay charges permitted under this section and take possession of
4 the animal, the animal shall be deemed to have been abandoned
5 and may be disposed of by the impounding officer.

6 (i) If the animal requires veterinary care and the humane society
7 or public agency is not assured, within 14 days of the seizure of
8 the animal, that the owner will provide the necessary care, the
9 animal shall not be returned to its owner and shall be deemed to
10 have been abandoned and may be disposed of by the impounding
11 officer. A veterinarian may humanely destroy an impounded animal
12 without regard to the prescribed holding period when it has been
13 determined that the animal has incurred severe injuries or is
14 incurably crippled. A veterinarian also may immediately humanely
15 destroy an impounded animal afflicted with a serious contagious
16 disease unless the owner or his or her agent immediately authorizes
17 treatment of the animal by a veterinarian at the expense of the
18 owner or agent.

19 (j) No animal properly seized under this section *or pursuant to*
20 *a search warrant* shall be returned to its owner until, in the
21 determination of the seizing agency or hearing officer, the animal
22 is physically fit or the owner can demonstrate to the seizing
23 agency's or hearing officer's satisfaction that the owner can and
24 will provide the necessary care.

25 (k) (1) *In the event that the owner has satisfied the lien provided*
26 *for in this section for the cost of caring for or treating an animal,*
27 *prior to final disposition of any criminal charges, the seizing*
28 *agency or prosecuting attorney may file a petition in the criminal*
29 *action requesting that the court issue an order forfeiting the animal*
30 *to the county or seizing agency prior to final disposition of the*
31 *criminal charge. The petitioner shall serve a true copy of the*
32 *petition upon the defendant and the prosecuting attorney.*

33 (2) *Upon receipt of a petition, the court shall set a hearing on*
34 *the petition. The hearing shall be conducted within 14 days after*
35 *the filing of the petition, or as soon as practicable.*

36 (3) *The petitioner shall have the burden of establishing probable*
37 *cause to believe that even in the event of acquittal, the owner*
38 *cannot and will not provide the necessary care for, or that the*
39 *owner will not legally be permitted to retain, any of the animals*

1 *in question. If the court finds probable cause exists, the court shall*
2 *order immediate forfeiture of the animal to the petitioner.*

3 ~~(k)~~

4 (l) (1) Upon the conviction of a person charged with a violation
5 of this section, or Section 597 or 597a, all animals lawfully seized
6 and impounded with respect to the violation shall be adjudged by
7 the court to be forfeited and shall thereupon be transferred to the
8 impounding officer or appropriate public entity for proper adoption
9 or other disposition. A person convicted of a violation of this
10 section shall be personally liable to the seizing agency for all costs
11 of impoundment from the time of seizure to the time of proper
12 disposition. Upon conviction, the court shall order the convicted
13 person to make payment to the appropriate public entity for the
14 costs incurred in the housing, care, feeding, and treatment of the
15 seized or impounded animals. Each person convicted in connection
16 with a particular animal may be held jointly and severally liable
17 for restitution for that particular animal. The payment shall be in
18 addition to any other fine or sentence ordered by the court.

19 (2) *If probation is granted, the court shall also order, as a*
20 *condition of probation, that the convicted person be prohibited*
21 *from owning, possessing, caring for, or having any contact with,*
22 *animals of any kind. Regardless of whether probation is granted,*
23 *the court shall require the convicted person to immediately deliver*
24 *all animals in his or her possession to a designated public entity*
25 *for adoption or other lawful disposition or provide proof to the*
26 *court that the person no longer has possession, care, or control*
27 *of any animals. In the event of the acquittal or final discharge*
28 *without conviction of the arrested person, if any of the animals*
29 *are still impounded because the animal or animals have not*
30 *previously been deemed abandoned pursuant to subdivision (h)*
31 *or the lien has been satisfied and the court has not previously*
32 *ordered that any of the animals be forfeited, the court shall, on*
33 *demand, direct the release of seized or impounded animals upon*
34 *a showing of all of the following:*

35 (A) *Proof of ownership.*

36 (B) *Proof that all charges for the cost of seizure and care of the*
37 *animals for the entire duration of the matter have been paid.*

38 (C) *Proof that the animals are physically fit and that the owner*
39 *has demonstrated to the seizing agency or the court that the owner*
40 *can and will provide the necessary care.*

1 (D) Proof that the owner can legally retain and possess all
2 animals in question.

3 ~~The court may also order, as a condition of probation, that the~~
4 ~~convicted person be prohibited from owning, possessing, caring~~
5 ~~for, or having any contact with, animals of any kind and require~~
6 ~~the convicted person to immediately deliver all animals in his or~~
7 ~~her possession to a designated public entity for adoption or other~~
8 ~~lawful disposition or provide proof to the court that the person no~~
9 ~~longer has possession, care, or control of any animals. In the event~~
10 ~~of the acquittal or final discharge without conviction of the arrested~~
11 ~~person, the court shall, on demand, direct the release of seized or~~
12 ~~impounded animals upon a showing of proof of ownership. Any~~

13 (3) Any questions regarding ownership shall be determined in
14 a separate hearing by the court where the criminal case was finally
15 adjudicated and the court shall hear testimony from any persons
16 who may assist the court in determining ownership of the animal.
17 If the owner is determined to be unknown or the owner is
18 prohibited or unable to retain possession of the animals for any
19 reason, the court shall order the animals to be released to the
20 appropriate public entity for adoption or other lawful disposition.
21 This section is not intended to cause the release of any animal,
22 bird, reptile, amphibian, or ~~fish~~, *fish* seized or impounded pursuant
23 to any other statute, ordinance, or municipal regulation. This
24 section shall not prohibit the seizure or impoundment of animals
25 as evidence as provided for under any other provision of law.

26 ~~(t)~~

27 (m) It shall be the duty of all peace officers, humane society
28 officers, and animal control officers to use all currently acceptable
29 methods of identification, both electronic and otherwise, to
30 determine the lawful owner or caretaker of any seized or
31 impounded animal. It shall also be their duty to make reasonable
32 efforts to notify the owner or caretaker of the whereabouts of the
33 animal and any procedures available for the lawful recovery of the
34 animal and, upon the owner's and caretaker's initiation of recovery
35 procedures, retain custody of the animal for a reasonable period
36 of time to allow for completion of the recovery process. Efforts to
37 locate or contact the owner or caretaker and communications with
38 persons claiming to be the owner or caretaker shall be recorded
39 and maintained and be made available for public inspection.

40 SEC. 2. Section 597.9 is added to the Penal Code, to read:

1 597.9. (a) Except as provided in subdivision (d) or (e), the
2 court shall, upon a conviction for a misdemeanor violation of
3 subdivision (a) or (b) of Section 597, or of Section 597a, 597b,
4 597h, 597j, 597s, or 597.1, in addition to any other sentence or
5 penalty imposed, enter an order enjoining the person from owning,
6 possessing, maintaining, having custody of, residing with, or caring
7 for any animal for a period of not less than five years.

8 (b) Except as provided in subdivision (d) or (e), the court shall,
9 upon a conviction of a person for a felony violation of subdivision
10 (a) or (b) of Section 597, or of Section 597b or 597.5, in addition
11 to any other sentence or penalty imposed, enter an order enjoining
12 the person from owning, possessing, maintaining, having custody
13 of, residing with, or caring for any animal for a period of not less
14 than 10 years.

15 (c) Any person who is convicted of violating an order issued
16 under this section is guilty of a public offense, which shall be
17 punished by imprisonment in a county jail not exceeding one year,
18 by a fine not exceeding one thousand dollars (\$1,000), or by both
19 that imprisonment and fine.

20 (d) (1) In cases of owners of livestock, as defined in Section
21 14205 of the Food and Agricultural Code, a court may, in the
22 interest of justice, exempt a defendant from the injunction required
23 under subdivision (a) or (b), as it would apply to livestock, if the
24 defendant files a petition with the court establishing that the
25 imposition of the provisions of this section would result in
26 substantial or undue economic hardship to the defendant's
27 livelihood and that the defendant has the ability to properly care
28 for all livestock in his or her possession.

29 (2) The petitioner shall serve a true copy of the petition upon
30 the court and the prosecuting attorney 10 calendar days prior to
31 the requested hearing. Upon petition from the defendant, the court
32 shall set a hearing on the petition. The hearing shall be conducted
33 within 30 days after the filing of the petition. The court shall grant
34 the petition for exemption from subdivision (a) or (b) unless the
35 prosecuting attorney shows by a preponderance of the evidence
36 that either or both of the criteria for exemption under this
37 subdivision are untrue.

38 (e) (1) A defendant may petition the court to reduce the duration
39 of the mandatory ownership prohibition. The petitioner shall serve
40 a true copy of the petition upon the court and the prosecuting

1 attorney 10 calendar days prior to the requested hearing. Upon a
2 petition from the defendant, the court shall set a hearing on the
3 petition. The hearing shall be conducted within 30 days after the
4 filing of the petition. At the hearing, the petitioner shall have the
5 burden of establishing probable cause to believe all of the
6 following:

7 (A) He or she does not present a danger to animals.

8 (B) He or she has the ability to properly care for all animals in
9 his or her possession.

10 (C) He or she has successfully completed all classes or
11 counseling ordered by the court.

12 (2) If the petitioner has met his or her burden, the court may
13 reduce the mandatory ownership prohibition and may order that
14 the defendant comply with reasonable and unannounced inspections
15 by animal control agencies or law enforcement.

16 SEC. 3. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution for certain
18 costs that may be incurred by a local agency or school district
19 because, in that regard, this act creates a new crime or infraction,
20 eliminates a crime or infraction, or changes the penalty for a crime
21 or infraction, within the meaning of Section 17556 of the
22 Government Code, or changes the definition of a crime within the
23 meaning of Section 6 of Article XIII B of the California
24 Constitution.

25 However, if the Commission on State Mandates determines that
26 this act contains other costs mandated by the state, reimbursement
27 to local agencies and school districts for those costs shall be made
28 pursuant to Part 7 (commencing with Section 17500) of Division
29 4 of Title 2 of the Government Code.